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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 38/2016*, **

Communication submitted by:	Munir al Adam (represented by counsel, the European-Saudi Organization for Human Rights and the Americans for Democracy and Human Rights in Bahrain)
Alleged victim:	The author
State party:	Saudi Arabia
Date of communication:	5 May 2016 (initial submission)
Document references:	Decision taken pursuant to rule 70 of the Committee's rules of procedure, transmitted to the State party on 24 July 2014 (not issued in document form)
Date of adoption of Views:	20 September 2018
Subject matter:	Torture resulting into disability; imposition of a death sentence after an unfair trial
Procedural issues:	Admissibility — valid power of attorney; another procedure of international investigation or settlement; exhaustion of domestic remedies; lack of substantiation
Substantive issues:	Death penalty; torture and ill-treatment resulting in worsening of pre-existing disability; right to gain access to medical treatment while in detention; incommunicado detention; right to a fair hearing by an independent and impartial tribunal; right to legal representation
Articles of the Convention:	4, 13 (1), 15 (1), 16 (1) and (4), and 25 (a)
Article of the Optional Protocol:	2

* Adopted by the Committee at its twentieth session (27 August–21 September 2018).

** The following members of the Committee participated in the examination of the communication: Danlami Umaru Basharu, Monthian Buntan, Imed Eddine Chaker, Theresia Degener, Jun Ishikawa, Samuel Njuguna Kabue, Hyung Shik Kim, Stig Langvad, Laszlo Gabor Lovaszy, Robert George Martin, Martin Babu Mwesigwa, Coomaravel Pyaneandee, Jonas Ruskus and Damjan Tatic. Pursuant to Rule 60 (1) (c) of the Committee's rules of procedure, Ahmad al Saif did not participate in the examination of the present communication.

GE.18-17710(E)

Please recycle

1.1 The author of the communication is Munir al Adam, a 23-year-old male national of Saudi Arabia. When he was a child he acquired a slight hearing impairment in his right ear as a result of an injury. He claims that, when he was in detention, Saudi security forces tortured him,[1] that the State party's authorities denied him treatment for the resulting injury and that, as a result, he completely lost hearing in his affected ear. He claims the State party violated his rights under articles 4, 13 (1), 15 (1), 16 (1) and (4), and 25 (b) of the Convention.[2] The author remains in detention at the General Directorate of Investigation in Al Dammam. The Optional Protocol entered into force for Saudi Arabia on 24 June 2008. The author is represented by counsel.

A. Summary of the information and arguments submitted by the parties

The facts as submitted by the author

2.1 When he was a child, the author suffered an injury. As a consequence, he acquired a partial hearing impairment in his right ear. The impairment remained stable. On 8 April 2012, Saudi security forces arrested him at a checkpoint between Safwa and Awamia and transported him to the Al-Qatif police station, where he was repeatedly subjected to falaqa, a method of torture whereby the detainee is beaten with a stick on the soles of his feet. Thereafter, he started crawling for days because he could not walk. Although he cannot remember the exact dates of all the acts of torture he suffered, he particularly remembers that, on 20 May, he was tortured in Al-Qatif police station, in the presence of the detective Mohammed Fahed al Shneeber.

2.2 After two weeks of detention at the Al-Qatif police station, the author was transferred to the General Directorate of Investigation, in Al Dammam, where he was put in solitary confinement and tortured again. A torturer threw him on the floor and, as he was lying face down, the torturer kicked him while wearing shoes forcefully on his back and kicked him in the face and other parts of his body. In addition, a torturer stepped with his shoes on the author's fingers and toes and crushed them, resulting in the removal of a fingernail and a toenail. As a result of those acts, his hearing impairment began to worsen. From that day on, the author requested access to medical services.

2.3 Some four and a half months later, the Saudi authorities transported the author to a military hospital in Dahran for a routine health check. The doctor said that the author suffered from hearing loss in his right ear of 70/110, and that urgent surgery was necessary in order to prevent permanent and complete hearing loss. The prison administration left the author untreated for six months, during which time his hearing progressively worsened. Six months later, the author was taken to another appointment with a doctor. The doctor stated that his condition had worsened to the point that he could no longer hear in his right ear. The doctor also stated that, at that point, surgery could not fix the author's hearing.

2.4 The State party's authorities were made aware of the author's deteriorating hearing in the medical report drawn up by the doctor at the General Directorate of Investigation in Al Dammam. However, they took no action in that regard. Additionally, since the beginning of his detention in April 2012, the author did not have access to a legal counsel, thereby depriving him of the support of a lawyer, including in gaining access to the necessary medical services.

2.5 On or about 5 September 2016, the author was prosecuted at the Specialized Criminal Court in Riyadh.[3] He was then allowed to appoint a lawyer, although he has not

[1] The author does not provide information about the reasons for his detention.

[2] The author does not provide information about the alleged violations of some of those articles.

[3] See Lori Plotkin Boghardt, "From ISIS to activists: new security trials in Saudi Arabia", *Research Notes*, No. 33 (Washington, D.C., Washington Institute for Near East Policy, May 2016), pp. 1–3: "Saudi Arabia's Specialized Criminal Court was set up at the General Court in Riyadh to try hundreds of detainees linked to the al-Qaeda attacks in the kingdom during the mid-2000s. ... Since then, information about the trials held in this national security court continues to be scarce. According to the Saudi embassy in Washington, by January 2016 the court had tried 2,225 cases, involving 6,122 defendants, since its inception. ... details about the defendants, charges, and trials for most of this

been able to have any contact with him. The public prosecutor requested the death penalty against the author.

2.6 As regards exhaustion of domestic remedies concerning the acts of torture, abuse and violence and the State party's failure to provide him with access to the necessary medical treatment, the author submits that his family did not initially submit a complaint to the Saudi Human Rights Commission[4] because they considered that such a complaint would be futile and result in retaliation. In this connection, the author makes reference to public reports according to which the Commission is unable to adequately represent the interests of victims of human rights violations insofar as it "appears to defer to the government agency targeted by the complaint. In detailing anonymized information about individual complaints dealing with torture and arbitrary detention, the Commission's 1433 AH report repeatedly states that the complaints are either under the agency's investigation, or that the agency's reply has been satisfactory."[5]

2.7 The author cannot apply for relief from the Saudi judicial system because it is complicit in the violations that he has suffered. According to a public report, "in addition to the adverse conditions resulting from overcrowding, allegations of direct acts of torture have emerged from within prisons". It is also stated in the report that "shortages of, and improperly trained, wardens; lack of access to prompt medical treatment when requested; holding prisoners beyond the end of their sentences; and failure to inform prisoners of their legal rights" are "conditions that facilitate an environment in which government officials can violate the provisions of the Convention against Torture with impunity".[6]

2.8 The author further submits that his family does not have access to a medical certificate to substantiate the claims of torture, as the Government of Saudi Arabia is complicit in his abuse and State agents acting in their official capacity perpetrated it. He argues that the State party therefore did not provide the family with medical documents that could incriminate them, in line with the prevailing practice in the State party to cover up torture by the State party's authorities and guarantee the impunity of such acts.

The complaint

3.1 The author submits that, when he was detained by the State party, he already had a partial hearing impairment in his right hear. He therefore considers that his case falls within the competence of the Committee.

3.2 He submits that the acts of torture that he suffered when he was detained and during his detention worsened his disability. In this connection, he alleges that, by slapping him around the ears during the torture, the State officials further damaged his already impaired

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reported caseload remain cloaked in secrecy. Nonetheless, information on specific cases has been easier to come by in recent years. This is partly a result of Riyadh's greater interest in publicizing measures against activity it defines as a state security crime. ... The Specialized Criminal Court was provided with its own codified jurisdiction in February 2014 with the promulgation of the Penal Law for Crimes of Terrorism and Its Financing. By July 2009, the kingdom announced that the Specialized Criminal Court had tried 330 of the defendants, and found all but a few guilty of supporting and financing terrorism, fighting in foreign conflicts, conspiracy to disrupt the kingdom's security, and other similar charges." See also "Saudi terror trials reach verdict", BBC News, 8 July 2009; and United States of America, Department of State, "2009 country reports on human rights practices: Saudi Arabia" (11 March 2010) and "2010 country reports on human rights practices: Saudi Arabia" (8 April 2011).

[4] In his comments on the State party's observations, the author indicated that his family had submitted a complaint to the Saudi Human Rights Commission, but to no avail (see paras. 5.4 and 8.6).

[5] The author refers to Americans for Democracy and Human Rights in Bahrain, "Mapping the Saudi State, chapter 9: national human rights institutions" (Washington, D.C., 2015), p. 6.

[6] The author refers to a report according to which the Saudi judicial system relies upon and encourages the use of torture, see Americans for Democracy and Human Rights in Bahrain and Bahrain Institute for Rights and Democracy, "The basis of brutality: a report on the implementation of Saudi Arabia's recommendations from the committee against torture" (Washington, D.C., August 2015), pp. 13–14. The author also refers to two opinions on similar cases (opinions No. 12/2015 and No. 32/2014) from the Working Group on Arbitrary Detention, relating to the alleged complicity of the Saudi criminal justice system in human rights violations, including torture.

hearing in violation of article 15 of the Convention. He further considers that the treatment he received from the security forces and prison authorities amounted to acts of abuse and violence, in violation of article 16 of the Convention.

3.3 The author also considers that, by failing to provide him with the necessary medical treatment to avoid permanent and complete hearing loss, the State party violated his rights under article 25 (b) of the Convention. In that regard, he argues that the State party denied him access to the urgent surgery that he needed despite having caused the injury that resulted in his permanent disability, and despite being aware that failure to treat it urgently would result in permanent and complete hearing loss.

3.4 The author also claims that, by denying him access to a lawyer from his detention in 2012 to the end of 2016, the State party's authorities interfered with his right to due process, including his right to consult with a legal counsel. He submits that, when his trial started, although he was finally granted access to a lawyer, all his requests to meet him were rejected. The author also submits that no measures were taken to enable him to take part effectively in the proceedings, despite his hearing impairment, and considers that the whole situation amounted to a violation of his rights under article 13 (1) of the Convention, read alone and together with article 4.[7]

State party's observations on admissibility

4.1 On 7 December 2016, the State party submitted its observations on the admissibility of the communication, requesting a separate consideration of the admissibility from the merits of the case. The State party acknowledges that the author remains detained at the General Directorate of Investigation, in Al Dammam.

4.2 The State party submits that the communication should be held inadmissible on three grounds. First, it argues that the complaint was not signed by the victim or a member of the victim's family and therefore does not comply with the requirements of article 2 (b) of the Optional Protocol. In this connection, it argues that "nothing prevents the complainant from submitting a communication himself or from providing a signed authorization for representation to the author of the communication".[8]

4.3 The State party then indicates that the same matter is pending before the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It considers that the Committee is therefore precluded from pursuing a concurrent investigation.

4.4 The State party finally submits that the author failed to exhaust all available domestic remedies, while "effective means of redress are available for the author" and that the complaint is not supported by any evidence.

Author's comments on the State party's observations on admissibility

5.1 On 7 March 2017, the author transmitted his comments on the State party's observations on admissibility. He submits that the arguments of the State party regarding the inadmissibility of his complaint are not valid.

5.2 Regarding the State party's argument that the author's complaint should be held inadmissible because the complaint itself was not signed by the author or his family, the author submits that this objection is factually moot because the initial complaint was submitted together with a handwritten power of attorney, in Arabic, clearly signed by "the family of the detainee, Munir al Adam".[9] The author then recalls that he is detained

[7] The initial complaint also alleged a violation of article 12 (3) in that regard, but this allegation was later removed.

[8] Informal translation of the State party's observations submitted in Arabic.

[9] The initial complaint was indeed accompanied by a handwritten power of attorney signed by members of the author's family according to the Committee's secretariat.

incommunicado, without the possibility to meet with his lawyer, and that, in such circumstances, he has not been able to provide a signed authorization or to submit his communication by himself.

5.3 As regards the State party's argument that the author's case is currently pending before several special rapporteurs, he recalls that, while it is true that article 2 (c) of the Optional Protocol states that a communication is inadmissible when the same matter is being examined under another procedure of international investigation or settlement, the parallel consideration of the same case by certain extra-conventional procedures or mechanisms established by the Human Rights Council should not be regarded as investigation or settlement in the sense intended by the Optional Protocol. In this connection, he refers to the jurisprudence of the Human Rights Committee and the Committee against Torture according to which the fact that a case is before various special rapporteurs does not preclude a committee from examining it.[10] The author argues that the same jurisprudence is applicable to the Committee insofar as the wording of article 2 (c) of the Optional Protocol is very similar to the corresponding provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the International Covenant on Civil and Political Rights.

5.4 As regards the need to exhaust domestic remedies, the author submits that, under article 2 (d) of the Optional Protocol, the rule is waived when recourse to the national justice system is unlikely to bring effective relief. In this connection, he argues that the State party's assertion that "effective means of redress are available" to the author is contradicted by the testimonies of his family, according to which the author is held in 24-hour solitary confinement and subjected to abusive and inhuman treatment (no more than seven hours sleep a night, interspersed with forced sitting and standing throughout the day), while being sentenced to death. The author also alleges that he has been pressured by a medical official who works in the detention system to recant his statements that claim he lost his hearing due to torture. The author's family adds that they have brought his case before the Ministry of the Interior, the court hearing his case, and the Saudi Human Rights Commission, but that none of these authorities has taken any appropriate action.

5.5 The author reiterates the reference to public reports documenting the complicity of the State party's judicial system in human rights abuses. In particular, the author considers that the reports reflect "the arbitrary nature of Saudi justice" and the "abusive exercises of legal power by Saudi Arabia's terrorism tribunal, the Specialized Criminal Court".[11] In such circumstances, there is no reason to consider that meaningful domestic remedies are available to the author, and the exception of article 2 (d) of the Optional Protocol therefore applies. The author concludes that the communication should be held admissible.

Additional information submitted by the author and interim measures requested by the Committee

6.1 On 25 May 2017, the author informed the Committee that the Specialized Criminal Court in Riyadh had approved the death sentence against the author, based on confessions extracted under torture.

6.2 On 26 May 2017, in view of the information available and pursuant to rule 64 of the its rules of procedure, the Committee requested the State party not to carry out the death sentence of the author while his case was under consideration by the Committee.

[10] See Human Rights Committee, *Laureano Atachahua v. Peru* (CCPR/C/56/D/540/1993), para. 7.1: "extra-conventional procedures or mechanisms established by the United Nations ... whose mandates are to examine and publicly report on ... major phenomena of human rights violations [worldwide], do not ... constitute a procedure of international investigation or settlement", and Committee against Torture, *Bendib v. Algeria* (CAT/C/51/D/376/2009), para. 5.1.

[11] See Christoph Wilcke, "Saudi Arabia needs a more transparent justice system", *Guardian*, 26 October 2011, and Human Rights Watch, "Saudi Arabia: abolish terrorism court", online statement, 27 April 2012.

State party's additional observations on admissibility

7.1 On 4 May 2017, the State party was requested to submit its observations on the merits of the communication. On 19 June 2017, the State party sent observations, reiterating its position that the communication should be held inadmissible under article 2 (b), (d) and (e) of the Optional Protocol, and that means of domestic redress were available to the author.

7.2 In this connection, the State party provides a list of the domestic authorities to which it considers that the author could address his case, namely the Ministry of the Interior (crime-control bodies), the Office of Public Prosecution, the director of the prison in which the author is detained, the competent court, the National Society for Human Rights and the Saudi Human Rights Commission.

7.3 The State party further stresses that a lawyer was appointed for the accused "at the expense of the State due to his poverty".

7.4 Reminders were sent to the State party requesting that it submit its observations on the merits on 21 June 2017, 25 October 2017 and 17 January 2018. The Committee regrets that this information has not been received. In the absence of the State party's observations on the merits, the Committee must give due weight to the author's allegations that have been properly substantiated.[12]

Author's comments on State party's additional observations

8.1 On 26 July 2018, the author provided comments on the State party's additional observations on admissibility. While referring to his previous comments on admissibility, the author submits that the State party's observations do not demonstrate that credible domestic alternatives are available to the author.

8.2 In this connection, the author submits that the crime-control bodies of the Ministry of the Interior, or the so-called General Directorate of Investigation, cannot provide an impartial and independent remedy insofar as it is under the authority of the Ministry of the Interior. He adds that his family has already reported his case to an investigator at the Ministry of the Interior, but to no avail.

8.3 As regards the Office of Public Prosecution, the author reiterates his allegation that this entity requested the death penalty against him on the basis of a confession extracted under torture, and in proceedings during which he was denied access to his lawyer. It is one of the authorities against which the author has submitted claims of abuse. The author therefore considers that it cannot be considered as an independent, impartial or appropriate avenue of redress.

8.4 Regarding the prison system, the author submits that he is still being held at the General Directorate of Investigation's Al Dammam complex, the same facility responsible for his torture. In this context, even if he were able to present a complaint to the facility's director, his case would be transferred to the Office of Public Prosecution, and can therefore not be considered as an available avenue of redress.

8.5 As far as the "competent court" is concerned, the author assumes that reference is being made to the Specialized Criminal Court, which presided over his case and prevented him from having any contact with his attorney, in violation of his right to due process. The author further submits that this court has not been impartial in his case, and that it is characterized by serious violations of the principles of due process.

8.6 In relation to the Saudi Human Rights Commission and the National Society for Human Rights, the author reiterates that his family has already officially reported his case to the Commission, but to no avail. He submits that both of these official human rights

[12] See, inter alia, Human Rights Committee, *El Hassy v. Libyan Arab Jamahiriya* (CCPR/C/91/D/1422/2005) para. 4 and *El Alwani v. Libyan Arab Jamahiriya* (CCPR/C/90/D/1295/2004), para. 4; Committee on Enforced Disappearances, *Deolinda Yrusta and Valle Yrusta v. Argentina* (CED/C/10/D/1/2013) para. 10.1; and Committee on the Rights of Persons with Disabilities, *X v. United Republic of Tanzania* (CRPD/C/18/D/22/2014), para. 6.

organs suffer from a lack of institutional independence and power to confront the State security sector. Referring to public reports on these institutions,[13] and stressing its reduced mandate and power, the author considers that it would be unreasonable to expect that an appeal to the National Society for Human Rights would be relevant in his case.

8.7 Regarding the State party's argument that the author had access to a lawyer paid at no expense, the author submits that the formal courtroom presence of a defence lawyer is irrelevant to the matters raised in the communication, namely that he was never allowed to communicate with his attorney; that he was tortured; that his coerced confession extracted under torture was used to convict him at trial; that he was denied due process of law; and that, throughout the process, the Saudi authorities failed to provide him with the necessary procedural accommodation, health support and rehabilitation services in accordance with the Convention.

8.8 The author expressed his fear that the State party would probably execute him in the near future, in contravention of the interim measures requested by the Committee to not carry out the author's death sentence while his case was under consideration by the Committee. On 25 May 2017, the Specialized Criminal Court upheld the death sentence on appeal. On 12 June 2017, the State party transferred the author to solitary confinement, where he has remained, with the obvious effect of further restricting information about developments in his situation. Since then, his family has not been able to visit or speak to him on the telephone. The author also indicates that the State party has increased its rate of executions. On 10 July 2017, death sentences was carried out against six prisoners; and another four were executed the following day. On 23 July 2017, the High Court confirmed the author's death sentence. This ruling is final and cannot be appealed.

Reiteration of interim measures and additional observations by the author

9.1 On 10 August 2017, the Committee reiterated its request for interim measures, recalling to the State party that the request for interim protection remained in effect until the examination of the complaint by the Committee.

9.2 On 10 September 2017, the author informed the Committee that, on 14 July 2017, he was transferred from the General Directorate of Investigation's Al Dammam facility to a detention centre in Riyadh, together with 13 persons sentenced to death. On 13 August 2017 the author was returned to Al Dammam. The reasons behind these transfers remain unclear. The author remains in solitary confinement, while the other death-row detainees have been returned to the general prison population. Additionally, he has not been allowed to receive any family visits since 4 June 2017. Since the time of his transfer to Riyadh, he has only been able to call his family once. The author considers that he has been treated worse than others in retaliation for having raised his case before a United Nations treaty body.

9.3 On 20 October 2017, the author informed the Committee that, on 18 October 2017, he was released from solitary confinement. The following day, 19 October, he received the first visit from his family since 4 June 2017. He welcomed these developments.

B. Committee's consideration of admissibility

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether the case is admissible under the Optional Protocol.

10.2 The Committee has ascertained, as required under article 2 (c) of the Optional Protocol, that the same matter has not already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement. In this connection, the Committee notes the State party's argument that the author's complaint should be held inadmissible as the same matter is pending before the Special

[13] See, inter alia, Ibrahim al-Mugaiteeb and Cristoph Wilcke, "Saudi justice", Human Rights Watch, online commentary, 16 April 2006. Available at www.hrw.org/news/2006/04/16/saudi-justice.

Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur Special on torture and other cruel, inhuman or degrading treatment or punishment. The Committee recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, and whose mandates are to examine and report publicly on human rights situations in specific countries or territories, or cases of widespread human rights violations worldwide, do not generally constitute an international procedure of investigation or settlement within the meaning of article 2 (c) of the Optional Protocol.[14] Accordingly, the Committee considers that the examination of the author's case by the special rapporteurs does not render the present communication inadmissible under article 2 (c) of the Optional Protocol.

10.3 The Committee further notes the State party's submission that the present communication should be held inadmissible under article 2 (b) of the Optional Protocol because it was signed by the victim or a member of the victim's family. The Committee also notes that, as highlighted by the author, the initial complaint was submitted together with a handwritten power of attorney clearly signed by his family. It further notes that the author is detained incommunicado, which has prevented him from providing a signed authorization or to submit his communication by himself. In such circumstances, and taking into account that communications may be submitted by or on behalf of individuals or groups of individuals,[15] the Committee concludes that the communication was submitted to it in accordance with the rules.

10.4 The Committee then notes that, according to the State party, the author failed to exhaust all available domestic remedies. In this regard, the Committee notes the State party's argument that the author should have submitted his case to the Ministry of the Interior (crime-control bodies), the Office of Public Prosecution, the director of the prison in which he is detained, the "competent court", the National Society for Human Rights and the Saudi Human Rights Commission. The Committee also notes, however, the author's submission that none of these remedies would be efficient and available in his case. In particular, the Committee notes that the author's family had already reported his case to the Ministry of the Interior and to the Saudi Human Rights Commission, but to no avail. It also notes the information submitted by the author according to which the General Directorate of Investigation, which is the control body of the Ministry of the Interior, the Saudi Human Rights Commission and the National Society for Human Rights lack independence and power in cases such as that of the author and could therefore not provide him with an independent and impartial remedy. The Committee also takes note of the author's submission that the Office of Public Prosecution cannot be considered as an independent, impartial or appropriate avenue of redress for the author insofar as it requested the death penalty in the case against him, and as the author has submitted claims of abuse against the institution. The author further submits that the State party's assertion that "effective means of redress are available" is contradicted by the testimonies of his family, according to which the author is held in 24-hour solitary confinement and subjected to abusive and inhuman treatment. The Committee additionally notes that the State party did not provide any information that would demonstrate the availability and efficiency of the remedies that it refers to in the case of the author. In view thereof, the Committee concludes that the remedies referred to by the State party would not be available for the author and that the communication is admissible under article 2 (d) of the Optional Protocol.

10.5 The Committee finally notes the State party's submission that the complaint is not supported by any evidence and should therefore be held inadmissible for lack of substantiation. It notes, however, the author's claim that, by failing to provide him with access to the necessary medical treatment following his torture, and by carrying out the criminal procedure against him without providing him with any procedural accommodation, the State party violated his rights as enshrined in the Convention, as he did not have the

[14] See Human Rights Committee, *Djebbar and Chihoub v. Algeria* (CCPR/C/103/D/1811/2008), para. 7.2, and *Krasovskaya and Krasovskaya v. Belarus* (CCPR/C/104/D/1820/2008), para. 7.2.

[15] Rule 69 of the Committee's rules of procedure (CRPD/C/1/Rev.1).

possibility to exercise his right of effective access to justice on an equal basis with others. The Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated his claims under articles 13 (1), 15, 16 and 25, read alone and in conjunction with article 4, of the Convention.

10.6 There being no other obstacles to admissibility, the Committee declares the communication admissible and proceeds to its examination of the merits.

C. Committee's consideration of the merits

11.1 The Committee has considered the present communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of its rules of procedure. Since the State party has not submitted any observations on the merits of the communication, due weight must be given to the author's claims insofar as they have been substantiated.[16]

11.2 The Committee notes the claims under article 15 of the Covenant that the author has been subjected to physical and psychological pressure since the first day of his detention by several police officers and prison officers to force him to confess guilt, and that these acts of torture have resulted in the complete loss of hearing in his right ear. The Committee recalls that, under article 15 (1) and (2) of the Convention, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and States parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment. The Committee also recalls that, once a complaint about ill-treatment contrary to article 15 has been filed, a State party must investigate the complaint promptly and impartially.[17] The Committee notes that, despite clear signs that the author was tortured and the complaints by his family and representatives in this connection, the State party has not presented any information to demonstrate that its authorities have conducted an effective investigation into those specific allegations. The Committee observes that none of those allegations have been refuted by the State party. In the circumstances, the Committee decides that due weight must be given to the author's allegations and concludes that the facts before it disclose a violation of his rights under article 15 of the Convention.

11.3 In the same way, the Committee takes note of the author's allegation under article 16 of the Convention, according to which States parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse. The Committee notes that the State party has not contested the information concerning the author's conditions of detention in solitary confinement, and the abuse, violence and torture he has been subjected to. The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; they must be treated in accordance with, inter alia, the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).[18] It considers that the author's treatment while in detention violates his right to be treated with humanity and with respect for the inherent dignity of the human person, and amounts to violence and abuse, in violation of article 16 of the Convention.

11.4 The Committee further notes the author's allegation under article 13 (1) of the Convention that (a) he was subjected to torture and forced to confess guilt, and that this confession was used by the courts to convict him and sentence him to death, despite requests by the author's family and representative that such evidence should be suppressed because it was obtained under torture; and (b) he did not have access to a lawyer until September 2016, when he was allowed to appoint one to represent him before the

[16] See *X v. United Republic of Tanzania*, para. 8.1.

[17] See Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14.

[18] See, for example, Human Rights Committee, *Kroumi v. Algeria* (CCPR/C/112/D/2083/2011), para. 8.8.

Specialized Criminal Court in Riyadh, but not to have any contact with him. The Committee recalls that, according to article 13 (1) of the Convention, States parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants. This entails the respect of all components of the right to fair trial, including the right to be represented and not to be submitted to any direct or indirect physical or undue psychological pressure from the investigating authorities, with a view to obtaining a confession of guilt.[19] In this connection, the Committee recalls that, in cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings,[20] and that information obtained as a result of torture must always be excluded from the evidence.[21]

11.5 In accordance with article 4, the State party is also under an obligation to promote effective access to justice for all persons with disabilities without discrimination of any kind on the basis of disability. In that regard, the Committee recalls that the rights and obligations with respect to equality and non-discrimination outlined in article 5 raise particular considerations with respect to article 13, which, among others, call for the provision of procedural accommodations. These accommodations are distinguishable from reasonable accommodation in that procedural accommodations are not limited by disproportionality. In the case of the author, the State party is therefore under the obligation to take all procedural accommodation that is necessary to enable his effective participation in the process, taking into account his hearing impairment. The Committee notes that, according to the available information, the State party has not taken any measure in that regard. In view thereof, the Committee concludes that the State party violated the author's rights under article 13 (1), read alone and in conjunction with article 4, of the Convention.

11.6 As regards the author's complaint under article 25 of the Convention, the Committee takes note of his allegation that the State party denied him access to the urgent surgery that he needed, despite having caused the injury that resulted in his permanent disability, and despite being aware that the failure to treat it would result in permanent and complete hearing loss. The Committee recalls that, in accordance with article 25 (b) of the Convention, States parties have an obligation to provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities. In the light of this provision, read in conjunction with article 14 (2) of the Convention, the Committee recalls that States parties have a special responsibility to uphold human rights when prison authorities exercise significant control or power over persons with disabilities who have been deprived of their liberty by a court of law. In the present case, the author had to wait for more than four months before getting access to the health services that he had been requesting; the authorities of the State party did not enable him to gain access to the surgery that he needed to avoid the complete loss of hearing in his right ear, despite having been informed of the urgency of this intervention; and, as a consequence, the author did indeed completely lose hearing in his right ear. The Committee therefore concludes that the State party violated the author's rights under article 25 (b) of the Convention.

D. Conclusion and recommendations

12. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under article 13 (1) read alone and in conjunction with articles 4, 15, 16 and 25 of the Convention. The Committee therefore makes the following recommendations to the State party:

[19] See, for example, Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 41; and *Berry v. Jamaica* (CCPR/C/50/D/330/1988), para. 11.7; and *Singarasa v. Sri Lanka* (CCPR/C/81/D/1033/2001), para. 7.4.

[20] See Human Rights Committee, general comment No. 32, para. 38.

[21] Ibid., para. 41.

(a) Concerning the author, the State party is under an obligation to:

(i) Provide him with an effective remedy, including an impartial, effective and thorough investigation into the claims of torture, prosecution of those responsible and effective reparation to the author and his family, and adequate monetary compensation for the loss of hearing in his right ear following the denial of access to necessary the medical services;

(ii) Review his conviction in accordance with the guarantees enshrined in the Convention, including the exclusion of the evidence obtained under torture, permanent suspension of solitary confinement, full access to his representatives, the provision of adapted procedural accommodations to ensure that he can effectively take part in proceedings and access to the necessary health services.

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future. In this regard, the Committee requires the State party to:

(i) Establish a clear prohibition of any act of torture in the justice and prison system;

(ii) Establish mechanisms to effectively and independently report and investigate allegations of torture;

(iii) Ensure the timely access to medical services in the context of detention, in accordance with article 25 of the Convention;

(iv) Give due consideration to abolishing the death penalty;

(v) Provide sufficient, regular training on the scope of the Convention and its Optional Protocol to judges, other judicial officers and prison officials.

13. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit to the Committee, within six months, a written response, including information on any action taken in the light of the present Views and the recommendations of the Committee.